IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 802 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KISHOR MANGALDAS MODI

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 802 of 2004

MR NIRAV C THAKKAR for Petitioner No. 1

MR VM PANCHOLI ADDL PUBLIC PROSECUTOR for Respondent No. 1

MR JITENDRA M. BUDDHABHATTI for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 10/08/2004

ORAL JUDGEMENT

Rule. Mr.V.M.Pancholi, learned APP appears and waives service of Rule for respondent No.1 - State, and

Mr.Jitendra M. Buddhabhatti appears and waives service of Rule for respondent Nos.2, 3 and 4 [original accused].

2. By filing this application under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for issuance of appropriate writ, order or direction cancelling the order of transfer of Criminal Misc. Application No.412 of 2004 from the Court of learned Fast Track Court No.1, Jamnagar to the Court of Learned Additional Sessions Judge, Jamnagar made in adminstrative capacity and further prayed to issue direction to the learned District and Sessions Judge, Jamnagar to place the Criminal Misc. Application No.412 of 2004 before the Fast Tract Court No.1 for judgment as soon as the learned Judge of the said Court is available.

3. As revealed from the record, FIR being C.R.No. I-46 / 2004 came to be registered before Kalyanpur Police Station against the present respondent Nos.2, 3 and 4 for the alleged offence under Sections 323, 324, 325, 326, 114 of the IPC and Section 135[1] of the Bombay Police Act on 12.7.2004. Respondent Nos.2 to 4 have preferred Criminal Misc. Application No.412 of 2004 on 20.7.2004 for being released on bail before the learned Fast Track Court No.1, Jamnagar. The petitioner engaged an Advocate to support the prosecution since the petitioner was the injured person and had also filed written objections against the release of the accused persons on bail. Hearing of the said bail application of the accused being delayed on account of the fact that the accused kept on seeking adjournments on one ground or the other. However, hearing of the bail application was completed before the learned Fast Track Court No.1 but the matter was kept for judgment only. According to the petitioner, on 31.7.2004, suddenly, Registry of the District Court, Jamnagar informed the Advocates concerned that the matter has been transferred to the Additional Sessions Judge, Jamnagar for hearing on 2.8.2004. The prosecution, therefore, sought time for preferring application below Exh.14 which was objected by the accused. On 2.8.2004 the learned Additional Sessions Judge, Jamnagar ordered that the accused would be heard on the application. Thereafter, the petitioner preferred application Exh.16 praying for some time and informing that hearing was over in the earlier court and only because the learned Judge had gone for training for a few days, the matter may not be reheard since the matter was kept for orders by the earlier Court. Upon such request, time was granted till 5.8.2004.

3. However, the petitioner challenges the impugned

order of transferring the bail application made on administrative side by the learned District and Sessions Judge, Jamnagar from the court of learned Fast Track Court No.1 to the Court of learned Additional Sessions Judge, Jamnagar on the grounds stated in the bail application.

4. Having heard Mr.V.P.Pancholi, learned APP for respondent State and Mr.Jitendra Buddhabhati for respondent Nos.2 to 4 [original accused who have filed bail application being Criminal Misc. Application No.412 of 2004 seeking their enlargement on bail], and on perusal of the averments made in the petition, so also, on the facts and circumstances emerging from the record of the case, according to this Court, the learned District and Sessions Judge, Jamnagar ought not have transferred the bail application in question to another court in view of the fact that the earlier court had invested sufficient time in the matter while hearing the entire application and the matter was kept only for final judgment. The learned District and Sessions Judge, Jamnagar has transferred the bail application in question only for the reason that the learned Judge of the earlier Court has gone for training for a short period. But in the opinion of this Court, that ought not have been the ground for transferring the matter to another Court, particularly, when the entire matter was heard and was kept for judgment only. Such transfer of bail application can be viewed as forum hunting since on earlier occasions time was sought for only by the accused. It is settled practice with regard to hearing of the bail application that normally the bail applications should be heard by the learned Judge concerned who has been initially allotted the said work, more particularly, when the said bail application was fully heard and the same was kept for judgment. In view of the above normal practice, transfer of the bail application in question was not warranted in the facts of case. Therefore, in aforesaid view of the matter, administrative order of the transfer made by the learned District and Sessions Judge, Jamnagar transferring the Criminal Misc. Application No.412 of 2004 from the Court of learned Fast Track Court No.1 to the court of learned Additional Sessions Judge, Jamnagar deserves to be quashed and set aside by accepting this petition.

5. For the foregoing reasons, present petition succeeds and accordingly, it is allowed. The impugned order of transfer made in administrative capacity by the learned District and Sessions Judge, Jamnagar transferring the Criminal Misc. Application No.412 of

2004 from the Court of learned Fast Track Court No.1 to the court of learned Additional Sessions Judge, Jamnagar is hereby quashed and set aside. The learned District and Sessions Judge, Jamnagar is directed to place Criminal Misc. Application No.412 of 2004 in the court of learned Fast Track Court No.1, Jamnagar for deciding the same in accordance with law.

6. It is told by the learned advocates for the parties that the concerned learned Judge is on training and he is likely to resume on 16th August, 2004. On resumption, it is expected of him that he shall decide the same in accordance with law on or before 27th August, 2004.

Rule is made absolute.

Direct Service is permitted.

Date : 10.8.2004 [A.M.Kapadia, J.]

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